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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,128	03/31/2004	Chandra Shekhar Nautiyal	026063-00003	3720

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EXAMINER

CLARDY, S

ART UNIT PAPER NUMBER

1617

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/813,128	<b>Applicant(s)</b> NAUTIYAL ET AL.	
	<b>Examiner</b> S. Mark Clardy	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 1-69 are pending in this application which claims benefit of US Provisional Application 60/458,372, filed March 31, 2003.

Applicants' claims are drawn to synergistic fermented compositions, methods of making them, and methods of using them for plant growth promotion, the compositions comprising:

- a) Bovine urine
- b) One or both of the following crushed plant material:
  - neem<sup>1</sup> leaves (10-750 g/L)
  - garlic<sup>2</sup> bulbs (1-500 g/L)
- c) Optional carriers<sup>3</sup>.

Claims 36-39, 45, 46, 58-60 are objected to because of the following informalities: the wording in claims 36-39, 45, and 46 is awkward. The term "log unit" in claims 58-60 is not clear. Appropriate correction is required.

Claim 49 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 17. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Stating that the combination "is most effective" does not further limit the independent claim.

Applicants are requested to clarify the meaning of the phrase "pres mud" (claim 6).

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<sup>1</sup> *Azadirachta indica*

<sup>2</sup> *Allium sativum*

<sup>3</sup> Claim 6: vermicompost, soil, peat, rice husk, vermiculite, carboxymethylcellulose, perlite, polyvinyl pyrrolidone, talc, fermented pres mud

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Blum et al (US 5,885,600), Grainge et al<sup>4</sup>, and Rausing et al (US 3,165,394).

Blum et al teach natural insect repellents comprising materials such as neem extract (col 3) and garlic extract (col 5, line 1) for use in planting material (abstract).

Grainge et al teach that the pesticidal properties of neem and garlic were well known.

Rausing et al teach a process for making compost from cattle urine and manure (col 1, lines 62-63), with additional components such as peat moss (col 2, lines 7-14).

One of ordinary skill in the art would be motivated to combine these references in order to add natural pesticidal material to planting materials such as compost.

Thus it would have been *prima facie* obvious to the ordinary artisan at the time the invention was made to have combined applicants' bovine urine, and one or more naturally pesticidal agents such as neem or garlic extract because the prior art teaches that these agents were known to have utility in planting material, and because cow urine and manure were also known components of planting material or compost.

No unobvious or unexpected results are noted; no claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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<sup>4</sup> Grainge et al. *Handbook of Plants with Pest-Control Properties*. P. xii-xiv, 17-18, 43-45. 1988.

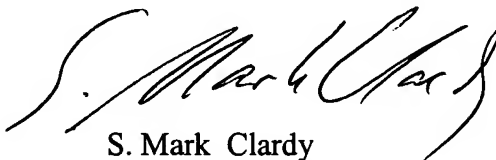
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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "S. Mark Clardy", is positioned above the printed name and title.

S. Mark Clardy  
Primary Examiner  
Art Unit 1617

June 23, 2006